

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

---

Thomas M. Moroughan,

Plaintiff,

-against-

The County of Suffolk, Suffolk County  
Police Department, Suffolk Detectives  
Ronald Tavares, Charles Leser, Eugene  
Geissinger, Nicholas Favatta, and Alfred  
Ciccotto, Detective /Sgt. William J. Lamb,  
Sgt. Jack Smithers, Suffolk Police Officers  
William Meaney, Enid Nieves, Channon  
Rocchio and Jesus Faya and Suffolk  
John Does 1-10, the County of Nassau,  
Nassau County Police Department, Sgt.  
Timothy Marinaci, Deputy Chief of Patrol  
John Hunter, Inspector Edmund Horace,  
Commanding Officer Daniel Flanagan,  
Detective /Sgt. John DeMartinis, Nassau  
Police Officers Anthony D. DiLeonardo,  
Edward Bienz and John Does 11-20,

Defendants.

**ANSWER TO AMENDED  
COMPLAINT**

**CV 12-0512 (JB)(AKT)**

**JURY TRIAL DEMANDED**

---

Defendants, COUNTY OF SUFFOLK, DETECTIVES RONALD TAVARES,  
CHARLES LESER, EUGENE GEISSINGER, NICHOLAS FAVATTA, ALFRED  
CICCOTTO, DETECTIVE SERGEANT WILLIAM LAMB, SGT. JACK SMITHERS,  
SUFFOLK POLICE OFFICER WILLIAM MEANEY, SUFFOLK POLICE OFFICER ENID  
NIEVES, POLICE OFFICER CHANNON ROCCHIO and POLICE OFFICER JESUS FAYA  
by their attorney, Paul J. Margiotta, Acting Suffolk County Attorney, by Brian C.  
Mitchell, Assistant County Attorney, answering the plaintiff's Amended Complaint  
hereby allege as follows:

1. Aver that the allegations contained in the paragraphs numbered 1, 2, 3  
and 4 of the amended complaint characterize the legal action being brought and

purport to invoke the jurisdiction of the Court pursuant to the enumerated statutes and, as such, make no answer save to demand strict proof thereof and to deny any conduct giving rise to any cause of action thereunder.

2. Deny knowledge or information sufficient to form a belief as to the allegations contained in the paragraph numbered 6 of the amended complaint, except admit that all of the named individuals were employed by the Suffolk County Police Department.

3. Deny knowledge or information sufficient to form a belief as to the allegations contained in the paragraph numbered 7 of the amended complaint, except admit that Suffolk County Police Department is an administrative agency of the County of Suffolk.

4. Deny knowledge or information sufficient to form a belief as to the allegations contained in the paragraph numbered 8 of the amended complaint, except admit that Tavares is a member of the Suffolk County Police Department.

5. Deny knowledge or information sufficient to form a belief as to the allegations contained in the paragraph numbered 9 of the amended complaint, except admit that Leser is a member of the Suffolk County Police Department.

6. Deny knowledge or information sufficient to form a belief as to the allegations contained in the paragraph numbered 10 of the amended complaint, except admit that Geissinger is a member of the Suffolk County Police Department.

7. Deny knowledge or information sufficient to form a belief as to the allegations contained in the paragraph numbered 11 of the amended complaint, except admit that Favata is a member of the Suffolk County Police Department.

8. Deny knowledge or information sufficient to form a belief as to the allegations contained in the paragraph numbered 12 of the amended complaint, except admit that Ciccotto is a member of the Suffolk County Police Department.

9. Deny knowledge or information sufficient to form a belief as to the allegations contained in the paragraph numbered 13 of the amended complaint, except admit that Lamb is a member of the Suffolk County Police Department.

10. Deny knowledge or information sufficient to form a belief as to the allegations contained in the paragraph numbered 14 of the amended complaint, except admit that Smithers is a member of the Suffolk County Police Department.

11. Deny knowledge or information sufficient to form a belief as to the allegations contained in the paragraph numbered 15 of the amended complaint, except admit that Meaney is a member of the Suffolk County Police Department.

12. Deny knowledge or information sufficient to form a belief as to the allegations contained in the paragraph numbered 16 of the amended complaint, except admit that Nieves is a member of the Suffolk County Police Department.

13. Deny knowledge or information sufficient to form a belief as to the allegations contained in the paragraph numbered 17 of the amended complaint, except admit that Rocchio is a member of the Suffolk County Police Department.

14. Deny knowledge or information sufficient to form a belief as to the allegations contained in the paragraph numbered 18 of the amended complaint, except admit that Faya is a member of the Suffolk County Police Department.

15. Deny knowledge or information sufficient to form a belief as to the allegations contained in the paragraphs numbered 5, 19, 20, 21, 31, 32, 33, 34, 35, 36, 37, 39, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 53 a-d, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 81, 82, 83, 84, 85,

86, 87, 89, 92, 94, 96, 97, 99, 101, 102, 102, 104, 105, 109, 113, 115 a-d, 116, 117, 139, 140 and 141.

16. Deny knowledge or information sufficient to form a belief as to the allegations contained in the paragraphs numbered 22, 23, 24, 25, 26, 27, 28, 29, 30, 38, 40, 52, 68, 80, 90, 93, 95, 98, 100, 106, 107, 108, 110, 111, 112, 114 a-f, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 133, 134, 135, 136, 137, 138, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 156, 157, 180, 181 a-e, 183, 185, 187, 189, 191, 193, 195, 197, 199, 201, 203, 205, 207, 109, 210, 212, 214, 216, 218, 220, 222, 224, 226, 227, 229, 231, 232, 234, 236, 238, 240, 241, 243 and 244 of the amended complaint, and refer all questions of law to the Court.

17. Deny the allegations contained in paragraphs numbered 88, 91, 132, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178 and 179 of the amended complaint.

18. Answering the paragraphs numbered 155 (1-154), 182 (156-181), 184 (182-183), 186, 188, 190, 192, 194, 196, 198, 200, 202, 204, 206, 208, 211, 213, 215, 217, 219, 221, 223, 225, 228, 230, 233, 235, 237, 239, and 242 of the amended complaint, repeat, reiterate and reallege each and every response to the recited paragraphs, with the same force and effect as if the same were set forth at length herein.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

19. That the amended complaint fails to state a claim upon which relief can be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

20. That the damages sustained by plaintiff, if any, were caused by the plaintiff's own culpable and/or negligent conduct.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

21. That the Complaint fails to set forth facts sufficient to constitute a deprivation of any constitutional right or other basis for a civil rights claim.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

22. That no policy, statement, ordinance, regulation or decision officially adopted and/or promulgated by defendants or otherwise ratified by defendants authorized a deprivation of plaintiff's constitutional rights.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

23. That no custom or usage adopted, followed, endorsed or ratified by defendants authorized a deprivation of plaintiff's constitutional rights.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

24. That municipal defendants are not liable for punitive damage awards.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

25. That this Court lacks subject matter jurisdiction.

**AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE**

27. That plaintiff has failed to comply with the statutory conditions precedent to commencement of an action against municipal defendants as set forth in the New York General Municipal Law.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

28 That defendant's actions, if any, were justified by the facts and circumstances presented.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

29. That the arrest and/or detention, if any, were reasonable and based upon probable cause to believe that the plaintiff had committed a crime and/or offense.

**AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE**

30. That the substance of any communications, if any, made by the defendants and/or their agents are and were true.

**AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE**

31. That the defendants, at all times complained of, acted reasonably and in good faith in the discharge of their official duties and responsibilities.

32. That defendants acted in what they did solely pursuant to their duties and responsibilities as law enforcement and/or prosecuting officials.

33. That defendants at all times acted in good faith in that they reasonably believed that they were exercising and acting within their statutory and constitutional powers.

34. That in performing such duties and responsibilities, defendants are and were protected by absolute and/or qualified Federal and/or State immunity.

**AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE**

35. That the substance of any communications, if any, made by defendants and/or their agents are and were absolutely privileged.

**AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE**

36. That the amended complaint fails to set forth sufficient facts to establish a claim of defamation and/or slander.

**AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE**

37. That this action is barred by the doctrines of qualified and/or absolute governmental immunity for discretionary acts.

**AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE**

38. To the extent that the amended complaint purports to set forth any supplemental state law claims, they are barred by the plaintiff's failure to comply with the statutory conditions precedent to commencement of an action against municipal defendants as set forth in the New York General Municipal Law.

**AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE**

39. That the Suffolk County Police Department is not an entity susceptible to suit.

**AS AND FOR A CROSS COMPLAINT  
AGAINST THE COUNTY OF NASSAU  
AND THE NASSAU COUNTY DEFENDANTS AND  
POLICE OFFICER ANTHONY DILEONARDO**

40. That if the plaintiff recovers herein against answering defendants, such recovery will have been caused and brought about by reason of the negligence or intentionally tortious acts of the co-defendants, by agents, servants and/or employees, which said negligence or intentionally tortious acts will have been primary and the negligence or intentionally tortious acts, if any, of answering defendants will be secondary, and answering defendants will be entitled to judgment against the co-defendants in any amount the plaintiff may recover herein, or in the alternate, to a determination of the comparative degrees of negligence or intentionally tortious acts of the said defendants, and to a judgment over in accordance with such determination.

WHEREFORE, defendants demand judgment against the plaintiff dismissing the amended complaint, together with the costs, disbursements and reasonable attorneys' fees of this action, or in the alternative, for judgment over and against the co-defendants in any amount plaintiff may recover against answering defendants, and/or to a determination of the respective degrees of negligence, and for judgment over and against said co-defendants in accordance therewith, together with the costs and disbursements hereof, and for such other and further relief as this Court deems



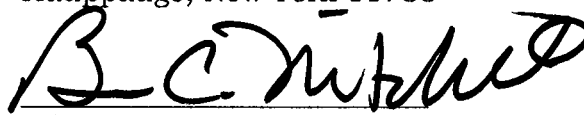
just and proper.

Dated: Hauppauge, New York  
December 20, 2012

Yours, etc.

PAUL J. MARGIOTTA  
ACTING SUFFOLK COUNTY ATTORNEY  
Attorney for Defendants,  
County of Suffolk, Detectives Tavares, Leser,  
Geissinger, Favatta, Ciccotto, Lamb, Smithers,  
Meaney, P.O.s Nieves, Rocchio and Faya  
H. Lee Dennison Building  
100 Veterans Memorial Highway  
P.O. Box 6100  
Hauppauge, New York 11788

By:

  
Brian C. Mitchell  
Assistant County Attorney

To:  
Law Office of Anthony M. Grandinette  
Attorney for Plaintiff  
114 Old Country Road, Suite 420  
Mineola, NY 11501

Office of the Nassau County Attorney  
One West Street  
Mineola, NY 11501

Amy Marion, Esq.  
Barket Marion Epstein & Kearon, LLP  
Attorneys for Defendant DiLeonardo  
666 Old Country Road, Suite 700  
Garden City, NY 11530